

JAMES H. LATHAM.

JULY 1, 1898.—Ordered to be printed.

Mr. HAWLEY, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany S. 4548.]

The Committee on Military Affairs, to whom was referred the bill (S. 4548) for the relief of James H. Latham, having considered the same, submit the following report:

James H. Latham was a captain in the Twenty-first Regiment of Connecticut Volunteers in service during the late war, who was dismissed from the service by sentence of general court-martial, and by the pending bill it is proposed that the Secretary of War shall be authorized and directed to revoke the order dismissing him, and to give him a certificate of honorable discharge, so that he shall hereafter be held and considered to have been honorably discharged from the military service of the United States.

The report of the Chief of the Record and Pension Office in this case is as follows:

It is shown by the records that James H. Latham was mustered into service September 5, 1862, as first lieutenant Company C, Twenty-first Connecticut Infantry Volunteers, to serve three years, and that he was promoted captain same company September 15, 1862.

He is reported on the bimonthly muster rolls of that company as follows: September and October, 1862, presence or absence not stated; from November and December, 1862, to November and December, 1863, present; January and February, 1864, absent without leave since February 19, 1864; from March and April, 1864, to January and February, 1865, present; March and April, 1865, absent without leave since April 18, 1865.

He was tried before a general court-martial, which convened August 6, 1864, on the charges of "disobedience of orders" and "absence without leave," but was acquitted and restored to duty.

He was tried before a general court-martial which convened at Richmond, Va., pursuant to orders dated April 14, 1865, for absence without leave from on or about March 11, 1865, to on or about March 27, 1865, and for breach of arrest on or about April 29, 1865. He was found guilty of absence without leave, confirming his plea, but was acquitted of the charge of breach of arrest, and was sentenced "to be dismissed the service of the United States, with loss of all pay and allowances that may become due from this date." The proceedings, findings, and sentence in the case were approved and promulgated in general court-martial orders No. 68, headquarters Department of Virginia, Army of the James, dated June 14, 1865.

In support of an application for revocation of the order dismissing this officer from the service, and for an honorable discharge, the following testimony has been filed: Latham testified December 28, 1869, as follows:

That he enlisted as a private in Company E, commanded by Edwin Chapman, in the Second Regiment Connecticut Volunteers in the war of 1861, for the term of three months, and was honorably discharged at expiration of term of service, on or about the 7th day of August, A. D. 1861; that in September, A. D. 1862, he enlisted as a first lieutenant in Company C, commanded by Capt. John E. Wood, in the Twenty-first Regiment of Connecticut Volunteers in the war of 1861, and was promoted to captain of said company on the 15th day of said September, A. D. 1862, and continued to be captain of the same Company C until on or about the 14th day of June, A. D. 1865, when he was dismissed from said service by an order of said court-martial for the offense of being "absent without leave," and after having served until within three months of the term for which he enlisted (three years), and was so dismissed, and on the same day that said regiment was honorably mustered out by reason of the close of the war. He further declares that he was never absent without leave as alleged, and that the absence without leave for which he was arraigned as aforesaid continued but twelve hours, and that such absence was occasioned by the transport upon which he was leaving her anchorage at Fort Monroe before he, the deponent, or the commanding officer, Maj. William Spittle, of the regiment, expected, and consequently left the applicant on shore, where he had obtained permission of the major commanding the regiment to remain for a few hours—time not specified; that when the deponent sought to return on board within the time granted by said major commanding, the transport was under way and beyond the power of the deponent to reach. He further swears that he immediately reported to the headquarters of his regiment at Chapin's farm, on the James River, Virginia, and was assigned and performed camp duties until the return of said regiment to its old camp at said Chapin's farm, said regiment having been absent on a reconnoitering expedition for a few days—some fifteen days—but during such absence of the regiment the deponent was on duty at said camp and rejoined the same upon its return, and should have joined it immediately after he was left ashore, as aforesaid, but the whereabouts of the same was unknown to the affiant during said fifteen days. He further swears that in his opinion his arraignment and trial was caused by personal animosity of one of the officers of the same regiment; that his trial took place remote from the regiment, where he could not procure witnesses of the alleged absence without leave, and where it was impossible for him to procure the testimony of Major Spittle, of the regiment, who gave verbal permission or leave of absence to the deponent, which absence he was subsequently arraigned for, through the procurement and personal malice of a brother officer of said regiment. He further swears that he was never absent without leave intentionally; that such absence was unavoidable, and he returned to duty at the earliest possible moment; that he was engaged in all of the active service of the Second Regiment Connecticut Volunteers, under Col. A. H. Terry, now Major-General Terry; that he was in every engagement and battle in which said Twenty-first Regiment was engaged during its full term of service of three years, and was seriously wounded on the 30th day of September, A. D. 1864, in the engagement at Chapin's farm, in Virginia, while in command of said regiment. He makes this application to obtain an honorable discharge from said service and to recover such allowances as such discharge entitled him to.

Ezra L. F. Tibbitts, aged 37 years, and John C. Douglass, aged 29 years, of Groton, Conn., testified December 28, 1869, as follows:

"That they are acquainted with the petitioner, James H. Latham, who was captain of Company C, Twenty-first Regiment Connecticut Volunteers in the war of 1861; that they were present and saw said Latham sign his name to the foregoing declaration, and they know him to be the identical person he represents himself to be. They also further swear that they were members—the said Tibbitts an orderly sergeant of said Company C and the said Douglass a color sergeant of Company E—in the Twenty-first Regiment Connecticut Volunteers, with and under the command of said Captain Latham at the time he was so charged by some officer of said regiment with 'absence without leave,' and they swear that they have heard the foregoing declaration and affidavit of said Latham read to them, and they personally know the statements therein contained to be true in all particulars."

On January 26, 1870, William Spittle, late major of the Twenty-first Connecticut Infantry Volunteers, swore to and subscribed a letter as follows:

CHICOPEE, MASS., *December 1, 1869.*

Col. HIRAM APPLEMAN.

DEAR SIR: Your letter of the 1st instant is received. I hasten to reply, so far as I can recollect.

On Friday, March 10, 1865, the Twenty-first Regiment was on board a United States

transport lying off Fort Monroe, myself being at the time in command of the regiment. Capt. J. Latham came to me for permission to go ashore. I gave him verbal permission to go; no definite period spoken of at the time; next morning, March 11, at 7 o'clock we weighed anchor and sailed for the Potomac, Latham not having returned; delayed for some cause which I have forgotten, but he (Latham) arriving at the fort in time to see us going down Hampton Roads, when he the next day returned to our camp, where we had left our sick men. Colonel Brown took command on the 11th. Captain Latham was reported absent without leave March 19. We arrived near our old camp March 26, in the evening; found Captain Latham in command. Latham took command of his company, Colonel Brown not saying anything to Latham about his absence. I have forgotten when Latham was ordered under arrest, but about the middle of May, 1865, the regiment being then at Columbia, Va., Colonel Brown ordered me to prefer "charges and specifications against Latham" for "absence without leave." On the 28th of April, 1865, our regiment was ordered from Manchester, Va., to Columbia, Va. During the day Latham, on account of having sore feet, I think, fell behind and did not come up until next day, if I am not mistaken. Now I think of it, that was the cause of Brown ordering Latham under arrest. As soon as we arrived at Columbia, Latham was ordered to Manchester, Va., for trial, and was not allowed time to send for witnesses for his defense. I think, at that time, I could have satisfied any unbiased court that he was not guilty to the extent that they sentenced him. If I remember right, he had no witness to testify for him. The whole affair was brought about by the personal malice of Colonel Brown, and it is a shame that Latham, after having been present with the regiment through every engagement, should be dismissed the service on the day the regiment was mustered out. There was no better officer in the whole regiment than Latham, and anything I can do conscientiously for him I will. I think the record of his services sufficient that the order dismissing him should be revoked and he be granted an honorable discharge, and when his case is presented to the War Department I think he will receive such discharge. Give my regards to "Jim" and tell him to write. Should there be anything further you desire from me let me know, and if in my power will grant it.

Respectfully,

WILLIAM SPITTLE.

Major Spittle, in an affidavit dated January 26, 1870, testified as follows:

"That on or about March, A. D. 1865, deponent was major commanding the Twenty-first Regiment Connecticut Volunteers in the war for the suppression of the Southern rebellion of 1861; that on said 10th day of March, 1865, while the regiment was on board of a transport vessel lying near Fort Monroe, in the State of Virginia, deponent gave leave of absence or permission verbally to Capt. James H. Latham, captain Company C, in said regiment, to go ashore at said Fort Monroe for no definite period, depending upon the honor of said Latham to return in a reasonable time; that in a few hours—not to exceed twelve hours—the transport weighed anchor unexpectedly to deponent and to said Captain Latham and sailed for the Potomac River, leaving said Latham still ashore. Said Latham, however, returned to the landing at said Fort Monroe in time to see our transport sailing away. He (Latham) being unable to join the regiment on the transport, immediately returned and reported to the regimental camp at Chapins Farm, on the James River, Virginia, where we had left the sick of the regiment. Col. James F. Brown took command of the regiment on the 11th day of March, A. D. 1865, the day after the deponent gave permission to said Latham to go ashore, and for some reason unknown to the deponent said Latham was reported 'absent without leave' March 19, 1865. On the 26th day of March, 1865, the regiment returned to its old camp at said Chapins Farm, and found, as stated, that Latham had returned to the camp and was in command of the camp and of his company. Latham was ordered under arrest on or about the middle of May, A. D. 1865, at least six weeks after he had rejoined the regiment and performed his duty as such captain. At said date I was ordered by Colonel Brown to prefer charges and specifications against said Latham for 'absence without leave,' notwithstanding I, while in command of the regiment, gave said Latham permission to go ashore, and notwithstanding his immediate return to camp at Chapins Farm, and having from said return been on duty at camp and with his company more than six weeks after so reporting and before said arrest. Deponent further swears that said Latham was tried by court-martial at Manchester, Va., June 5, 1865, for said 'absence without leave,' and, not being allowed time to send for witnesses, especially for the deponent, who gave him permission to leave indefinitely, was convicted of being 'absent without leave,' and said Latham was dismissed the service on the very day the regiment was mustered out of the United States service at Manchester, Va., on or about the 16th day of June, A. D. 1865. Deponent further swears that the deponent enlisted as captain in said regiment at its organization, in September, A. D. 1862; that he was promoted to major of the same and remained with the regiment until its expiration of term of service of three years; that said Latham also

was a captain in the same from its organization and served honorably until such arrest on or about the 15th of May, 1865, about one month previous to the muster out of said regiment and the close of the war; that there was no more faithful and efficient officer in said regiment than said Latham; that said arrest and trial were without sufficient provocation and were the result of personal malice toward said Latham on the part of a superior officer; that deponent has no interest whatever in any matter in which this affidavit may be used as evidence."

Under date February 18, 1870, at Hartford, Conn., Gen. Joseph R. Hawley addressed a letter to the Secretary of War, as follows:

"I have carefully inquired into the circumstances connected with the dismissal of Capt. James H. Latham, Company C, Twenty-first Connecticut, before consenting to write a letter in his behalf. Captain Latham was in the three months' service early in 1861, and, afterward joining the Twenty-first Connecticut, served honorably through the whole war, never missing an engagement. As I understand it, while his regiment was lying on board ship at Fortress Monroe, he got leave from the major commanding to go ashore with no time stated, remained overnight, and next morning on coming to the wharf saw the transport moving off. He immediately returned to the former camp, reported to the general commanding, and was assigned to duty, rejoining his regiment on its return. This was in March, 1865. It was not until May that Colonel Brown, commanding the regiment, ordered him under arrest, and the order of dismissal was received the very day (June 14) the regiment was mustered out. Latham was wrong, of course, and deserved some censure, but I submit that the punishment was very severe. These facts are to be considered: (1) Colonel Brown had been appointed to the regiment while it was in the field, Latham being senior captain. This kept Latham from becoming a field officer. There was undoubtedly an unkind feeling between them, but as it happened Colonel B. was not in command at the time Latham was guilty of negligence. (2) Captain Latham missed no engagement by his stay on shore, and never missed one. (3) He was a very capable and faithful officer, and has ever since the war been a very worthy citizen, residing in the town where his father is a prominent and honorable citizen. Cashiering was to him and them a terrible punishment for a single act of youthful folly and disobedience that did not involve his fidelity as a patriot, or his bravery as an officer, or his character as a gentleman. I join in respectfully asking that Captain Latham may have on honorable discharge."

Under date February 18, 1870, at Hartford, Conn., the governor of Connecticut (Marshall Jewell) wrote the Secretary of War, as follows:

"I have examined with some care the matter of the dismissal of Capt. James H. Latham, Company C, Twenty-first Regiment Connecticut Volunteers. From a knowledge of Captain Latham, his family and friends, and particularly from the testimony of Major Spittle, who is a first-class man, I am clearly of the opinion that justice to our bravest and best soldiers demands that Captain Latham's dismissal should be revoked, and that he should have an honorable discharge."

On March 12, 1870, the disability resulting from the dismissal of Captain Latham pursuant to the sentence of a general court-martial was removed, and the action of the Department communicated to the governor of Connecticut in a letter of that date, of which the following is a copy:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, March 12, 1870.

His Excellency the GOVERNOR OF CONNECTICUT,
Hartford, Conn.

SIR: By direction of the President of the United States the disability resulting from the dismissal of James H. Latham (formerly a captain in the Twenty-first Regiment Connecticut Volunteer Infantry) by sentence of general court-martial promulgated in General Court-Martial Orders, No. 68, dated June 14, 1865, from headquarters Department of Virginia, is hereby removed, and he may be recommissioned should Your Excellency so desire, evidence now submitted having fully established his innocence of intentional absence without leave.

Very respectfully, your obedient servant,

THOMAS M. VINCENT,
Assistant Adjutant-General.

On the same day (March 12, 1870) Captain Latham was informed of the removal of the disability, and that the effect of this action was to remove the stigma resting upon him by reason of dismissal, and to declare him qualified to reenter the service as a commissioned officer.

Applying for an honorable discharge, Captain Latham testified, February 7, 1870, as follows:

"Was mustered as a first lieutenant September 5, 1862; promoted captain Sep-

tember 15, 1862, and dismissed June 14, 1865, by sentence of General Court-Martial order No. 68, Department of Virginia, dated June 14, 1865.

"Having filed evidence since my dismissal fully establishing my innocence of intentional absence without leave, and the disability resulting from my dismissal from service having been removed, in accordance with said evidence submitted by a communication from the War Department to his excellency the governor of Connecticut, dated March 12, 1870, I have the honor to request that a certificate of honorable service be granted to me."

In reply the Department stated that in cases in which the order of dismissal has been carried into effect and the officer has been separated from the service thereby, it is beyond the power of any executive officer to revoke, modify, or set it aside, however unmerited or injudicious that order may be deemed to have been, and that the application for an honorable discharge can not, therefore, be favorably considered. It was also stated that the removal of the disability resulting from the dismissal of a volunteer officer was merely the declaration that the Government would not object to receive him again into the service should the governor of his State see fit to recommit him, but that this action did not affect the officer's dismissal by sentence of a general court-martial, nor did it entitle him to an honorable discharge.

Respectfully submitted.

F. C. AINSWORTH,

Colonel, United States Army, Chief Record and Pension Office.

RECORD AND PENSION OFFICE,
War Department, February 14, 1898.

The SECRETARY OF WAR.

It will be seen from the report quoted above that Mr. Latham entered the service in September, 1862, as a first lieutenant in his company, and was almost immediately promoted to the grade of captain, which grade he continued to hold until the date of his dismissal, which, by a singular coincidence, was the same date as that of the muster out of his company.

No mention is made in the War Department report of the earlier service rendered by Captain Latham, but that service is mentioned in his own statement, confirmed by the official records, which show that he was enlisted April 22, 1861, as a private in the Second Connecticut Infantry in the three months' service, was promoted to the grade of corporal, and was mustered out of service with his company at the date of the expiration of its term of service.

Thus we have before us the case of a young man who patriotically entered the service under the first call for troops in 1861, and served faithfully in the ranks as an enlisted man until the expiration of the period for which he had enlisted and for which his company was organized. A year later, finding his services again needed, he reentered the service, this time as a commissioned officer, for the period of three years, serving until the very day of the muster out of his company and regiment, when he was dishonorably dismissed the service. After three years of honorable and faithful service, participating in all of the marches and battles in which his regiment was engaged, and having been once wounded in battle, he was sent home in disgrace, while his comrades, who had performed no more meritorious service than he, were returning to their families and friends covered with the honors of war.

It is true that Captain Latham had been found guilty by court-martial of the military crime of absence without leave. But it is shown by indisputable testimony that his alleged offense was merely a technical one, unaccompanied by any criminal intent, and that his absence from his command was unintentional, and, under the circumstances in which he was placed, unavoidable. He was temporarily absent by permission of his regimental commander, and while so absent his regiment sailed away and left him.

In 1870, when he applied for a revocation of the order of dismissal and an honorable discharge, the War Department, while not author-

ized to grant all that was asked, unhesitatingly extended such relief as it was authorized to extend, removing the obstacle to his reentering the service, basing its action upon the fact that the evidence submitted had fully established his "innocence of intentional absence without leave."

This action of the War Department, taken "by direction of the President," was based in part upon a review of the case by the late Judge-Advocate-General Holt, whose report is so comprehensive as to the facts, so conclusive as to the status of the case, and so convincing as to the innocence of the accused officer that it is here given in full. The report is as follows:

WAR DEPARTMENT,
Bureau of Military Justice, February 26, 1870.

The SECRETARY OF WAR:

The papers relating to the application of James H. Latham, late captain, Twenty-first Regiment Connecticut Volunteers, for a revocation of the order dismissing him from service and for an honorable discharge, are respectfully returned with the following remarks.

The applicant was convicted in June, 1865, upon his pleading of guilty to the charge of "absence without leave," and was sentenced to be dismissed, with loss of all pay and allowances to become due him after the date of the sentence.

This sentence having been formally approved and executed, it has passed beyond the reach of remission. The only relief within the power of the Executive to afford in the premises is a removal of the disability to reenter the service imposed upon Captain Latham by his dismissal from the service.

Notwithstanding the plea of guilty entered by the applicant on his trial, this Bureau is of the opinion, after an examination of the testimony now submitted in his behalf, that his absence from his command was void of all the essential elements to constitute criminality, and that he pleaded under a misapprehension of the scope of the offense charged, inasmuch as the facts specified were technically true. The specification was as follows: "In this, that he, Capt. James H. Latham, Twenty-first Connecticut Volunteers, did absent himself from his company and regiment without authority from his commanding officer on or about the 11th day of March, 1865, and did remain absent until on or about the 27th day of March, 1865."

The petitioner was in fact absent from his command during the time alleged without having authority for such absence, and he could but admit the truth of the allegations. Had he accompanied his plea of guilty with a statement of the reasons for his absence it is believed that no sentence would have been adjudged against him.

From the affidavit of William Spittle, late major of the Twenty-first Connecticut Volunteers, it appears that that regiment was, on the 10th of March, 1865, on board of a transport lying near Fort Monroe, and that affiant, who was in command of the regiment, verbally granted Captain Latham permission to go on shore; that within a few hours the steamer weighed anchor and sailed for the Potomac River, leaving Latham on shore, the latter having returned to the landing in time to witness the sailing of the boat, but too late to get on board; that he thereupon returned and reported at the regimental camp at Chapins Farm, Va., to which point the regiment returned March 26, 1865; that shortly after the affiant gave Latham leave of absence Colonel Brown assumed command of the regiment, and that Latham was not ordered under arrest until six weeks after the regiment had returned, during which time he had been constantly on duty. Major Spittle's affidavit further sets forth that Latham was an officer in the Twenty-first Connecticut Volunteers from its organization and served honorably up to the date of his dismissal, which occurred one month before the muster out of the regiment at the expiration of its three years' term.

The affidavit of the claimant is to the same effect as that of Major Spittle, and its allegations are believed to be true.

It is therefore advised that the full measure of relief within the power of the Executive be afforded by the removal of the disability resting on Captain Latham, and that in the order of promulgation the fact be recited that from evidence now submitted his innocence of intentional absence without leave is fully demonstrated.

J. HOLT, *Judge-Advocate-General.*

The reason that Captain Latham did not earlier apply for the full and complete relief that can be afforded only by Congressional legislation evidently lies in the fact that he relied upon the action of the War Department as a sufficient vindication of his military record. He

is now dead, and by his dismissal his widow finds herself deprived of the benefits and privileges due to the widow of an honorably discharged officer.

The general excellence of Captain Latham's military record and his innocence of any criminality in the technical offense for which he was dismissed have been established to the entire satisfaction of your committee, and if it is necessary to seek a further reason for a vindication of the character of this officer such a further reason is to be found in the fact that he belonged to a family illustrious for its patriotism and the service rendered to the country by its members, his grandfather, Ensign William Latham, having been wounded in the defense of Fort Griswold in 1781 and Captain Latham himself having been one of six grandsons of this Revolutionary ancestor in service during the late war for the preservation of the Union.

The bill under consideration appears to be in proper form, and it is recommended by your committee that it be adopted.



